

1 BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

2 STATE OF MONTANA

3 * * * * *

4 BOARD OF TRUSTEES, ROSEBUD)
5 COUNTY SCHOOL DISTRICT NO. 19)
6 COLSTRIP, MONTANA,)

7 Respondent/Appellant,)

8 vs.)

9 ELMER R. BALDRIDGE,)

10 Petitioner/Respondent.)

OSPI 193-91
(Third Appeal)

DECISION AND ORDER

11 * * * * *

STATEMENT OF THE CASE

12 This case has had a lengthy journey through the
13 administrative process. The matter has been before the State
14 Superintendent on three appeals. This is the first appeal in
15 which the facts have been set forth.

16 In early 1988 a series of events occurred. A letter of
17 complaint from parents precipitated inquiries into Baldridge's
18 classroom behavior by the high school principal. Based upon
19 initial information obtained from student interviews and a
20 meeting with the teacher, the principal recommended suspension of
21 Baldridge with pay pending an investigation.

22 On April 29, 1988, the Superintendent of the Colstrip School
23 District wrote a letter to the Chairman of the school Board
24 recommending that the trustees dismiss Elmer Baldridge
25 (hereinafter "Baldridge"), a tenured teacher Baldridge pursuant

1 On April 17, 1991, the acting county superintendent issued
2 Findings of Fact, Conclusions of Law and Order. The School
3 District filed the present appeal on May 14, 1991.

4 STANDARD OF REVIEW

5 The standards for review by the state superintendent are set
6 forth in § 10.6.125, ARM, which reads as follows:

7 (1) The state superintendent of public instruction
8 may use the standard of review as set forth below and
9 shall be confined to the record unless otherwise
10 decided.

11 (2) In cases of alleged irregularities in
12 procedure before the county superintendent not shown on
13 the record, proof thereof may be taken by the state
14 superintendent.

15 (3) Upon request, the state superintendent shall
16 hear oral arguments and receive written briefs.

17 (4) The state superintendent may not substitute
18 her judgment for that of the county superintendent as
19 to the weight of the evidence on questions of a fact.
20 The state superintendent may affirm the decision of the
21 county superintendent or remand the case for further
22 proceedings or refuse to accept the appeal on the
23 grounds that the state superintendent fails to retain
24 proper jurisdiction on the matter. The state
25 superintendent may reverse or modify the decision if
substantial rights of the appellant have been
prejudiced because the findings of fact, conclusions of
law and order are:

(a) in violation of statutory authority of the
agency;

(b) in excess of the statutory authority of the
agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable,
probative and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by
abuse of discretion or clearly unwarranted exercise of
discretion;

(g) because findings of fact upon issues essential
to the decision were not made although requested.

This rule was modeled upon § 2-4-704, MCA, and the

DISCUSSION

Review of this matter is made difficult because the acting county superintendent has ignored the decision of this Superintendent. The previous decision of this Superintendent vacated the acting county superintendent's decision and remanded the matter for further findings in conformance with the opinion. The acting county superintendent was directed to consider all evidence before her and to make a determination as to whether the trustees dismissed Baldridge with or without good cause, OSPI 183-89, decided September 26, 1990. That decision found that Baldridge was accorded all statutory due process rights in the procedures followed by the school district leading up to his dismissal. Although reminded upon remand, the acting county superintendent has failed to meet the mandate of § 10.6.119, ARM, of "findings of fact accompanied by a concise and explicit statement of the underlying facts supporting the findings based exclusively on the evidence and supporting authority or reasoned opinion for each conclusion of law."

DUE PROCESS

This Superintendent in her previous decision held that the board had complied with statutory requirements of due process. The acting county superintendent in her decision on remand restated her previous finding of fact in the form of a conclusion of law and again found: "#4. The district superintendent and the Colstrip Board of Trustees did not follow due process in the

GOOD CAUSE

The sole issue before the acting county superintendent on remand was whether the trustees had good cause to dismiss Baldridge. The closest that the acting county superintendent's decision comes to answering that question is Conclusion of Law

#3. It states:

This Acting County Superintendent does not approve of the conduct displayed by the Petitioner on March 30, 1988, but all other accusations heard in hearing were hearsay and interpretations without any previous written documentation in personnel file or on evaluations.

Section 20-4-207, MCA, provides that the trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees. Upon appeal of such a decision, the county superintendent, after a hearing, must determine whether the trustees' dismissal was made with or without good cause. The trustees dismissed Baldridge for incompetency, unfitness and violation of the adopted policies of the trustees based upon specific allegations.

On remand, the acting county superintendent added the following findings of fact:

7. That the Petitioner was known to be "a thorn in the side" of the district superintendent and the board of trustees because he often challenged the discrimination against Native American students and because he chaired the CFA grievance committee in a number of successful complaints.

8. That the students who testified for the Respondent

1 Baldridge admitted making the statement and termed it
2 a joke.

3 4. Joke using terms "quizzzy" and "testes" with sexual
4 connotations. Baldridge admitted telling the joke in
5 classes. (Tr., p. 422)

6 5. The incident alleged by a student where Baldridge
7 indicated that he was "hung" was denied by Baldridge in
8 the hearing before the county superintendent. At the
9 school board hearing he testified that he had no memory
10 of the incident but did not believe the student
11 testifying would lie. (R Exhibit 2, p. 146)

12 6. Use of the term "prick" was denied at the county
13 superintendent hearing and admitted at the school board
14 hearing. (R Exhibit 2, p. 148.)

15 7. Giving students "the finger" or "flipping off
16 students." This was denied in testimony before the
17 county superintendent in contradiction of testimony
18 before the board. (R Exhibit 2, page 148)

19 8. Statements by Baldridge to a female student
20 regarding the sight of blood and that "she must have a
21 rough month" were admitted by Baldridge and recognized
22 as inappropriate and deserved an apology. (Tr. p. 430)

23 9. Baldridge distributed copies of the letter from the
24 principal to his class and discussed the matter with
25 them. He also taped portions of the discussion.

26 The statutory grounds for dismissal relate to core
27 requirements of fitness and in a district's interest in
28 eliminating unfit professionals from its schools:

29 The calling of a teacher is so intimate, its duties so
30 delicate, the things in which a teacher might prove
31 unworthy or would fail are so numerous that they are
32 incapable of enumeration in any legislative enactment.
33 *** His habits, his speech, his good name, his
34 cleanliness, the wisdom and propriety of his unofficial
35 utterances, his associations, all are involved. His
36 ability to inspire children and to govern them his
37 power as a teacher, and the **character** for which he
38 stands are matters of major concern in a teacher's
39 selection and retention." Board of Trustees v.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 13th day of January, 1992,
a true and exact copy of the foregoing Decision and Order was
mailed, postage prepaid, to the following:

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